

Diamond
CH₃O-- and CH₃(C=O)O--, provided that R₁, R₂, R₃ and R₄ are not each HO-- simultaneously[, and pharmaceutically acceptable derivatives thereof].

REMARKS

Claims 5-7 are pending. Claim 5 has been amended to limit the invention to preferred embodiments. No new matter has been added.

Claims 5-6 were rejected under the judicially created doctrine of obviousness-type double patenting over U.S. patent 5,663,209. A terminal disclaimer has been filed, and it is believed that the rejection is overcome.

Claims 5-7 were rejected under 35 USC § 112, second paragraph, because the Examiner considered the meaning of "derivatives" to be unclear. The claims have been amended to delete this term. It is believed that the rejection is overcome.

Claims 5-7 were rejected under 35 USC § 102(e) as being anticipated by Sinnott et al. (U.S. Pat. No. 5,837,252). It is the Examiner's position that the complex formulation of Sinnott, comprising *Larrea tridentata* extracts, includes Mal 4, and further that the recitation "pharmaceutically acceptable derivatives thereof" might include the components of Sinnott's composition. Applicants previously filed a Declaration under Rule 131. The Declaration establishes that the presently claimed invention was made prior to the filing date of the '252 patent. The Examiner has taken the position that the Declaration is insufficient because the Sinnott patent claims the same invention. The claims have been amended to recite "consisting essentially of" and to remove the recitation of "pharmaceutically acceptable derivatives thereof". It is respectfully submitted that the presently pending claims do not claim the same invention as Sinnott, which teaches and claims the use of extracts containing a

number of components. Accordingly, withdrawal of the § 102(e) rejection is respectfully requested.

In view of the above, it is believed that the application is in condition for allowance, and Notice to that effect is respectfully requested.

Respectfully submitted,

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